Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the Matter of	)	
	)	
Advanced Methods to Target and Eliminate Unlawful Robocalls	)	CG Docket No. 17-59
	)	
	)	
Call Authentication Trust Anchor	)	WC Docket No. 17-97

COMMENTS OF ACA INTERNATIONAL

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I. INTRODUCTION AND SUMMARY.

ACA International ("ACA") respectfully submits these comments in response to the Federal Communication Commission's ("FCC" or "Commission") *Third Further Notice of Proposed Rulemaking* in the above-captioned proceeding, which seeks comment on the contours of an appropriate SHAKEN/STIR implementation framework, along with safeguards for legitimate callers.[1] ACA welcomes the Commission's efforts to protect consumers against scam, fraud, and other unlawful automated calls. ACA also appreciates the Commission's efforts to develop clear, reasonable rules that enable consumers to receive important, lawful communications that they want and need.

As the Commission is aware, American consumers and many legitimate American organizations continue to suffer because of unwarranted litigation, particularly under the Telephone Consumer Protection Act ("TCPA"), stemming from poorly defined terms or impractical requirements. To help ensure that any rules adopted in this proceeding are consistent

[1] *Advanced Methods to Target and Eliminate Unlawful Robocalls, Call Authentication Trust Anchor*, CG Docket No. 17-59 and WC Docket No. 17-97, Declaratory Ruling and Third Further Notice of Proposed Rulemaking, FCC 19-51 (rel. June 7, 2019) ("*Third FNPRM*" or "*Declaratory Ruling*", as appropriate).

with the goals of targeting bad actors and stopping unlawful calls, ACA recommends the following. First, any safe harbor should narrowly apply only to the blocking of calls that fail SHAKEN/STIR—and only after all carriers have fully implemented SHAKEN/STIR. Such a measure would minimize the likelihood of overbroad or erroneous call blocking. Second, once voice service providers have implemented SHAKEN/STIR, the Commission should update the June 2019 *Declaratory Ruling* and clarify that voice service providers may no longer rely on "reasonable analytics" to block "unwanted" "robocalls" on an opt-out basis. Clarifying that this element of the *Declaratory Ruling* is transitional in nature would provide greater clarity to callers, consumers, and the public. Third, the Commission should ensure that any "critical calls lists" or "white lists" do not become *de facto* blacklists under the safe harbor regime. Calls should not be blocked simply because they do not appear on a list of "approved" numbers. Finally, the Commission should require voice service providers implementing SHAKEN/STIR to maintain appropriate procedural and substantive safeguards, including providing timely notice to callers and subscribers when calls are blocked and allowing for a cost-free challenge process for legitimate callers to contest false positives.

II. ABOUT ACA INTERNATIONAL.

ACA International is the leading trade association for credit and collection professionals. Founded in 1939, and with offices in Washington, D.C. and Minneapolis, Minnesota, ACA represents approximately 3,000 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates in an industry that employs more than 230,000 employees worldwide.

ACA members include the smallest of businesses that operate within a limited geographic range of a single state, and the largest of publicly held, multinational corporations that operate in every state. The majority of ACA-member debt-collection companies, however, are small

businesses. According to a recent survey, 44 percent of ACA member organizations (831 companies) have fewer than nine employees. Additionally, 85 percent of members (1,624 companies) have 49 or fewer employees and 93 percent of members (1,784) have 99 or fewer employees.

As part of the process of attempting to recover outstanding payments, ACA members are an extension of every community's businesses. ACA members work with these businesses, large and small, to obtain payment for the goods and services already received by consumers. In years past, the combined effort of ACA members has resulted in the annual recovery of billions of dollars—dollars that are returned to and reinvested by businesses and dollars that would otherwise constitute losses on the financial statements of those businesses. Without an effective collection process, the economic viability of these businesses and, by extension, the American economy in general, is threatened. Recovering rightfully-owed consumer debt enables organizations to survive, helps prevent job losses, keeps credit, goods, and services available, and reduces the need for tax increases to cover governmental budget shortfalls.

An academic study confirms the consumer harm that can result when unpaid debt is not addressed.[2] Multiple regulators recognize the important role that debt recovery plays in today's economy. The Consumer Financial Protection Bureau ("CFPB" or "Bureau"), the agency Congress provided supervisory and rulemaking authority within the Dodd-Frank Wall Street Reform and Consumer Protection Act for the debt collection industry, has recognized the importance of the industry on numerous occasions. The CFPB reiterated these points a few months ago in its Notice of Proposed Rulemaking for the Fair Debt Collection Practices Act

[2] Todd Zywicki, *The Law and Economics of Consumer Debt Collection and Its Regulation*, (Sept. 2015), *available at* https://www.mercatus.org/system/files/Zywicki-Debt-Collection.pdf.

(Regulation F).[3] After nearly seven years of researching communication issues surrounding debt collection, the Bureau proposed comprehensive rules in this area. ACA members work to help consumers understand their financial situation and what can be done to address and improve it.

ACA members are also consumers, and like many consumers, ACA's members greatly dislike fraudulent and illegal robocalls. Accordingly, ACA's members appreciate the work of the FCC to stop those making such abusive calls. These efforts are certainly worthwhile and deserve the serious attention they have been given by the Commission and Congress. But because scammers, by definition, operate outside the bounds of the law, they very often they do not pay the fines levied against them for bad behavior.[4]

[3] CFPB Director Kathleen L. Kraninger's Speech at the Debt Collection Town Hall, *The practice of debt collection predates the use of money* (May 8, 2019), *available at* https://www.consumerfinance.gov/about-us/newsroom/cfpb-kathleen-l-kraninger-speech-debt-collection-town-hall/ ("Debt collection is an important part of any credit ecosystem. And there is no doubt that a healthy credit ecosystem is vital to the lives of most Americans. It enables us to make purchases and repay the costs over time. It enables us to pay for services and pay in arrears. It enables us to weather financial storms. But when consumers do not make timely payments on their debts they become delinquent and they enter the collections part of the ecosystem. A collections item can start as an overdue medical bill, utility bill, or any kind of unpaid loan or invoice. Sometimes it affects a person who has overextended themselves financially; and sometimes the individual has lost a job, fallen ill, had an accident, or something else has happened to set them back financially. Whatever the reason, large numbers of Americans fall behind on their debts at one time or another….").

[4] *See, e.g.*, Sarah Krouse, *The FCC Has Fined Robocallers $208 Million. It's Collected $6,790*, Wall St. J., *available at* https://www.wsj.com/articles/the-fcc-has-fined-robocallers-208-million-its-collected-6-790-11553770803 (March 28, 2019).

III. ANY SAFE HARBOR SHOULD APPLY ONLY TO THE BLOCKING OF CALLS THAT FAIL SHAKEN/STIR AND ONLY AFTER SHAKEN/STIR IS UNIVERSALLY DEPLOYED.

If the Commission decides to adopt a call-blocking safe harbor, the safe harbor should extend only to calls that fail the SHAKEN/STIR authentication framework. The Commission should not provide a safe harbor for the blocking of calls by individual carriers through tools made available to subscribers on an opt-out basis pursuant to the June 2019 *Declaratory Ruling*.[5] In other words, there should be no safe harbor for the blocking of lawful calls that pass SHAKEN/STIR but that an individual voice service provider deems to be "unwanted" on the basis of "reasonable analytics."

Narrowly tailoring any call-blocking safe harbor would give consumers and good-faith callers clear expectations. Unfortunately, the ongoing policy discussion about appropriate, modern calling and texting rules has been saddled with a vocabulary that uses words with potentially nebulous meanings. For example, stakeholders including the Commission have highlighted the confusion over the term "robocall" for many years and how it may encompass calls that all reasonable observers would conclude are lawful and legitimate.[6] As evidenced in this proceeding, this conversation has evolved into a discussion of what is an "unwanted" or "wanted" call. Likewise, the *Declaratory Ruling* refers to "reasonable analytics," a malleable

[5] *Declaratory Ruling* ¶ 34.

[6] *See, e.g., Report on Robocalls: A Report of the Consumer and Governmental Affairs Bureau Federal Communications Commission*, CG Docket No. 17-59, ¶ 4 (rel. Feb. 2019) ("Consumers frequently associate 'robocalls' with annoying calls and, indeed, unwanted calls are a perennial top consumer complaint. Accordingly, fighting illegal robocalls is a priority for both the Commission and the FTC. And yet the term 'robocall' covers a wide array of calls, many of which are legal, such as school closing announcements and prescription or medical appointment reminders. We thus caution that reports about and data related to robocalls, without detailed analysis, can blur the lines between legal robocalls, both welcome and unwelcome, and illegal robocalls.").

concept that individual voice service providers may seek to interpret differently. For its part, the *Third Further Notice* is full of questions and statements referencing such potentially ambiguous terms (such as "unwanted calls") in the context of SHAKEN/STIR technology.[7]

Because neither the Commission nor SHAKEN/STIR define what is a "wanted" or "unwanted" call, these concepts should be avoided in the context of a safe harbor for call blocking—as should concepts of "reasonable analytics." Instead, the SHAKEN/STIR framework represents a more concrete technical solution that asks an objectively ascertainable question. The SHAKEN/STIR technology cryptographically signs the originating call, which is then checked and validated by the terminating voice service provider.[8] The absence of a match indicates that a malicious actor has attempted to spoof another number or bypass the SHAKEN/STIR framework altogether.[9] SHAKEN/STIR does not ask the subjective question of whether the call is "wanted" or "unwanted." Moreover, unlike "reasonable analytics," where voice service providers may each seek to interpret the standards differently, SHAKEN/STIR applies uniformly throughout the ecosystem based on agreed-upon specifications.

To avoid further confusion, any call-blocking safe harbor should not become effective until all carriers have fully implemented SHAKEN/STIR. The SHAKEN/STIR framework is in its nascent stages, is relatively unproven in the field, and has not been adopted by all voice service providers, especially the rural and smaller carriers.[10] The telecommunications solutions

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[7] *See, e.g.*, *Third Further Notice* ¶ 58 ("Are there any particular protections we should establish for a safe harbor to ensure that wanted calls are not blocked?").

[8] *Third Further Notice* ¶ 50.

[9] *Id.*

[10] News Release, *Fed. Commc'ns Comm'n, FCC Chairman Announces Another Step in Fight Against Spoofed Robocalls*, at 2 (May 13, 2019), https://docs.fcc.gov/public/attachments/DOC-

company iconectiv was selected in late May to be the administrator of the SHAKEN/STIR framework, but key aspects of the framework remain under review by iconectiv and industry stakeholders.[11] For example, there is no consensus or uniform approach regarding how a call's authentication status should be presented when a call is delivered to its recipient. Also, notably, the calling community has rarely been consulted during the development of SHAKEN/STIR, and it is still far from clear that it will work in a way that is effective and not unduly burdensome.

Were the Commission to adopt a safe harbor based on the state of technology today, an otherwise valid, lawful call could be signed by the originating provider, routed through a provider that has not adopted SHAKEN/STIR, and then be blocked. There may be technical errors in which the carrier does not fully sign or attest an otherwise lawful, legitimate call. For example, a call may only receive a "partial" or a "gateway" level of attestation, especially in the context of older originating providers, such as time-division multiple access networks, or calls that pass through VoIP gateways. Only after all of SHAKEN/STIR is fully implemented would a safe harbor be appropriate. "Full implementation" should be considered met only when all voice service providers are able to authenticate calls using SHAKEN/STIR.

357422A1.pdf (noting that some voice service providers need to "catch up" with implementation of the SHAKEN/STIR framework).

[11] Press Release, *ATIS, Mitigating Illegal Robocalling Advances with Secure Telephone Identity Governance Authority Board's Selection of iconectiv as Policy Administrator* (May 30, 2019), https://sites.atis.org/insights/mitigating-illegal-robocalling-advances-with-secure-telephone-identity-governance-authority-boards-selection-of-iconectiv-as-policy-administrator/.

IV. THE COMMISSION SHOULD CLARIFY THAT PARTS OF THE *DECLARATORY RULING* WILL NO LONGER APPLY AFTER SHAKEN/STIR IS IMPLEMENTED WIDELY.

The Commission should also update the *Declaratory Ruling* in light of this proceeding and prohibit carriers from blocking lawful, authenticated calls that pass SHAKEN/STIR, except where an individual caller has expressly requested that a call be blocked. In other words, the Commission should rescind the portion of the *Declaratory Ruling* allowing voice service providers to rely on "reasonable analytics" to block calls on an opt-out basis. Such a practice should no longer be considered "just and reasonable" under Section 201 of the Communications Act.

As an initial matter, the SHAKEN/STIR framework—once successfully deployed by all voice service providers—will obviate the need to use "reasonable analytics" to determine whether a "robocall" is "unwanted." As noted above, SHAKEN/STIR asks an objective technical question based on publicly available standards. Thus, disallowing opt-out call blocking based on "reasonable analytics" would encourage public reliance on SHAKEN/STIR and eliminate the possibility that calls get blocked based on subjective criteria, while also continuing to protect consumers that expressly request additional blocking. Doing so would also minimize the likelihood of false positives. Once a legitimate, lawful call passes SHAKEN/STIR, the presumption must be that the call should pass through to the recipient.

Clarifying that the *Declaratory Ruling* is a temporary measure would also provide greater clarity to callers, consumers, and the public. As it stands, the relationship between the *Declaratory Ruling* and *Third Further Notice* is somewhat ill-defined. As one example, the Commission does not state whether it expects opt-out call blocking based on "reasonable analytics" to persist after SHAKEN/STIR is rolled out. Neither does the Commission clarify whether voice service providers would have the ability to unilaterally block calls that otherwise

pass SHAKEN/STIR using "reasonable analytics." Enacting a sunset provision on the *Declaratory Ruling* (at least with respect to the blocking of authenticated callers on an opt-out basis) would clarify these issues and avoid any potential conflict between the *Declaratory Ruling* and the *Third Further Notice*.

For these reasons, ACA encourages the Commission to clarify that the use of "reasonable analytics" to block calls on an opt-out basis is a transitional measure, but would no longer qualify as a "just and reasonable" practice under Section 201 of the Communications Act once voice service providers fully operationalize SHAKEN/STIR.

V. THE COMMISSION SHOULD NOT PERMIT "CRITICAL CALLS LISTS" AND "WHITE LISTS" TO BECOME *DE FACTO* BLACKLISTS.

The Commission seeks comment on requiring voice service providers to maintain a "critical calls list" of numbers that may not be blocked.[12] Other commenters have urged the Commission to require that carriers maintain "white lists" of approved telephone numbers from which calls should not be blocked.[13] The *Third Further Notice* suggests that any "critical calls list" include emergency calls from 911 call centers and public-safety answering points. For its part, the Commission also recognizes that other calls from schools, doctors, and local governments may be important candidates for inclusion.[14]

If the Commission allows for a "critical calls list" or "white list," it must ensure that any such lists do not ultimately lead to a *de facto* black list—that is, voice service providers should not be allowed to decide unilaterally that a call should be blocked due in part to the fact that the caller does not appear on either list of "approved" numbers. A scenario in which the government

[12] *Third Further Notice* ¶¶ 63-70.

[13] *Id.* ¶ 64.

[14] *Third Further Notice* ¶ 66.

dictates that some preapproved content may pass through the public switched telephone network ("PSTN"), whereas anything else may be blocked by default, would raise grave concerns under the First Amendment and contravene the Commission's provisions relating to common carriage.

The default presumption should continue to be that any lawful call passing through the PSTN should be transmitted. That is especially true if the call has passed SHAKEN/STIR authentication. Once SHAKEN/STIR is widely adopted among voice service providers, the fact that a fully authenticated call has passed through the provider(s) should remove any discretion on the part of voice service providers to transmit calls to the intended recipient.

VI. THE COMMISSION SHOULD REQUIRE VOICE SERVICE PROVIDERS TO GIVE TIMELY NOTICE TO CALLERS AND SUBSCRIBERS WHEN CALLS ARE BLOCKED, ALONG WITH A COST-FREE PROCESS TO CONTEST FALSE POSITIVES.

The Commission has recognized the importance of effective, prompt notice to callers and subscribers whenever blocking occurs.[15] Such notice helps identify erroneous blocking and can help mitigate the health, safety, and other harms to consumers from not receiving important, time-sensitive information from legitimate callers. The Commission has also recognized the importance of providing a challenge mechanism for erroneously blocked calls from legitimate callers, stating that such challenge mechanisms are expected as part of any "reasonable" blocking.[16]

The same remains true with the implementation of SHAKEN/STIR. If the Commission were to establish a safe harbor for voice service providers that block calls using SHAKEN/STIR, at least three sets of protections should remain in place for consumers that rely on time-sensitive calls and texts from legitimate callers.

[15] *Declaratory Ruling* ¶ 38.

[16] *Id*.

First, as an express condition of any SHAKEN/STIR safe harbor, the Commission should require voice service providers to implement modest procedural and substantive protections to correct mistakes in a timely manner.

As one example, ACA agrees with the Commission's suggestion that voice service providers be required to notify callers when calls are blocked.[17] Legitimate callers cannot know with certainty that their calls are being blocked unless notified by voice service providers. And if legitimate callers do not know their calls are being blocked, they cannot file complaints with the voice service providers (or the Commission) or challenge instances of mistaken call blocking. Moreover, if callers do not know their calls are being blocked, they may over-report instances of call blocking out of an abundance of caution. Actual notice of blocking therefore serves as the lynchpin of any fair dispute resolution mechanism. Voice service providers should notify callers of *any* call block, regardless of whether the blocking results from SHAKEN/STIR.

The Commission can implement a notification requirement in any number of ways. One solution outlined in the *Third Further Notice* would be to require voice service providers to send an intercept message with a Session Initiation Protocol code to blocked callers. This protocol would notify the caller that the call attempt has been rejected.[18] The protocol seems like a promising solution because it specifications have already been developed for its use in conjunction with SHAKEN/STIR.[19]

Voice service providers should also designate a 24/7 point of contact on their websites, including a name, phone number, and an email address for the contact. This information will

[17] *Third Further Notice* ¶ 58.

[18] *See Third Further Notice* ¶ 58 n.106.

[19] *See* E. Burger *et al.*, *A Session Initiation Protocol (SIP) Response Code for Rejected Calls* (Apr. 7, 2019), https://tools.ietf.org/html/draft-ietf-sipcore-rejected-06#section-5.1

help ensure that an accountable resource exists for legitimate callers who find themselves effectively locked out of the PSTN. These measures find precedential support in this proceeding. The companion *Declaratory Ruling* observes, for example, that "a reasonable call-blocking program instituted by default would include a point of contact for legitimate callers to report what they believe to be erroneous blocking as well as a mechanism for such complaints to be resolved."[20]

Voice service providers should also be expected to have and make publicly available their procedures for resolving any call blocking dispute, along with posting the substantive criteria by which any call may be blocked. For a voice service provider to be protected by the safe harbor, moreover, they should remediate erroneously blocked calls within 24 hours.

Correcting erroneous blocks would implement congressional direction contained in the Senate-passed TRACED Act that the Commission not "support blocking or mislabeling calls from legitimate businesses" and that the Commission "should require voice service providers to unblock improperly blocked calls in as timely and efficient a manner as reasonable."[21] It would also be consistent with legislation recently passed by the House that would require the Commission to ensure that call-blocking services provided to consumers have "effective redress options" for erroneously blocked calls that resolve such blocks with "no additional charge to callers."[22] ACA does not expect these or similar minimal measures to be invasive or cost-prohibitive for voice service providers.

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[20] *Declaratory Ruling* ¶ 38.

[21] S. Rep. No. 116-41, at 15 (2019) (Senate Commerce Committee report on the TRACED Act (S. 151, 116th Cong. (2019)), which passed the Senate by a vote of 97-1 on May 23, 2019).

[22] H.R. 3375, Stopping Bad Robocalls Act, 116th Cong. § 8 (2019).

Second, the Commission asks whether "there [are] any aspects of the governance authority that the Commission should handle itself or [whether] the Commission's role [should] be limited to . . . formal oversight."[23] The Commission should reserve for itself the role of resolving disputes—however unlikely—between callers and carriers related to instances of call blocking.

ACA appreciates carriers' efforts to implement SHAKEN/STIR and recognizes the shared objective among all to protect consumers while avoiding overbroad call blocking. Nevertheless, the Commission should serve as an adjudicatory body of last resort. Doing so will incentivize callers and carriers to deal with each other in good faith. As a dispute resolution body of last resort, the Commission would play a role similar to that it has played for many years in other situations, including retransmission consent for the carriage of broadcasters' signals.

Finally, any challenge mechanisms should be provided cost-free to legitimate callers. Given the potential volume of calls that may be blocked, legitimate callers should not bear the expense of ensuring that lawful calls pass through the PSTN. As one example, callers should not be required to pay any carrier-imposed fee to have a complaint resolved. Placing the financial onus on callers would subvert the very notion of a PSTN and create an untenable gatekeeper scenario that disadvantages legitimate callers—especially smaller companies that lack the scale or resources to contest call blocking errors.

* * *

These measures would protect consumers and legitimate callers, would not impose onerous obligations on voice service providers, and are imminently reasonable in return for any safe harbor immunity that voice service providers may receive. They also encourage cooperation

[23] *Third Further Notice* ¶ 79.

between callers, consumers, and carriers. And these proposals are also unlikely to be abused: because bad actors do not follow the law, they are unlikely to engage with protections intended for legitimate callers.

VII. CONCLUSION.

ACA strongly supports the Commission's efforts to target the serious problem of illegal, scam, and fraudulent automated calls. ACA also commends voice service providers for developing technological solutions to target unlawful spoofers, scammers, and bad actors. The Commission, carriers, legitimate callers, and consumers share a mutual interest in making sure compliance-minded businesses can communicate with their customers, and that consumers continue to receive the calls they want and expect. Adopting sensible protections for consumers and legitimate callers in this proceeding would help achieve stakeholders' shared objectives to make the PSTN more reliable for everybody.

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